

ReExamination: Frequently Asked Questions

Following, are some answers to frequently asked questions regarding second decrees. Remember, it is your responsibility to make sure your water rights and other rights are accurate. This is your final opportunity to object to claims you believe are inaccurate.

- What is a second decree and why is it being issued?
 - Early in the adjudication process, the issuance of two decrees was planned for every Basin. Each decree required a full objection process. The legislature changed this requirement in 1997, implementing a single decree system for all remaining Basins.
 - Second decrees will be issued in those Basins not impacted by the 1997 law.
- How are first and second decrees similar? How do they differ?
 - DNRC review standards will be applied to claims that were not litigated during the first decree phase. If an element of a claim appeared on the Objection List, that element is considered litigated for purposes of reexamination.
 - Per section 85-2-233 (1)(d), MCA:

After March 28, 1997, a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

 - (i) mistake, inadvertence, surprise, or excusable neglect;
 - (ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);
 - (iii) fraud, misrepresentation, or other misconduct of an adverse party;
 - (iv) the temporary preliminary decree is void; or
 - (v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.
 - Late claims were not always included in first decrees – depending on when the decree was issued. All unexamined late claims will be subject to DNRC examination and included in the second decrees.
 - Second decrees will not include withdrawn claims, terminated claims, dismissed claims, permits, or change authorizations.
- How can a claimant be sure their claim is correct?

- Accuracy is dependent on your participation in the process:
 - Claimants are encouraged to work with the DNRC to resolve issues arising during examination of claims and after the decree has been issued. Working with the DNRC may help you minimize or avoid litigation over your claims in the Water Court.
 - Water right users should also review claims in the decree and object to claims that are inaccurate.
- Will the claims in the second decree be examined again?
 - Yes. DNRC reexamination will focus on:
 - Decree exceeded issues;
 - Issues with filed and use rights predating district court decrees;
 - Issues with over-filed Notices of Appropriation;
 - Multiple use claims; and
 - Standardization and identification of points of diversion, sources, and ditch names.
- If a claim received an objection in the first decree, can it receive another objection?
 - Yes, but there are some limitations.
 - Section 85-2-233(c), MCA states:

A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree unless the objection is allowed for any of the following reasons:

 - (i) mistake, inadvertence, surprise, or excusable neglect;
 - (ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;
 - (iii) fraud, misrepresentation, or other misconduct of an adverse party;
 - (iv) the judgment is void; or
 - (v) any other reason justifying relief from the operation of the judgment.
- Will the claims in second decrees have issue remarks?
 - Yes. Any issue remarks that were left unresolved during the first decree will remain on the claim. Additionally, the DNRC may identify new issues as a result of the reexamination of the claims in the decree. Issue remarks identify potential legal or factual issues with water rights. It is often possible to resolve these remarks by working with the DNRC or Water Court.

- The Water Court is obligated by statute to resolve issue remarks.
- What timeline can parties expect?
 - The Water Court will begin issuing second decrees in early 2016 and the process will continue until all necessary second decrees are issued.
- How can parties be sure that they will get notice that a decree has been issued?
 - The DNRC and the Water Court will use the contact information on file with the DNRC. It is the responsibility of water right owners to update their addresses and telephone numbers with the DNRC. The DNRC can be contacted as follows: <http://dnrc.mt.gov/divisions/water/water-rights>
- Why does the DNRC contact claimants during examination of claims?
 - If DNRC examination of a claim raises issues or questions, the DNRC will contact the claimant. The contact between the DNRC and the claimant may or may not resolve the issue. Unresolved issues are documented and reported as “issue remarks” on the claim. Issue remarks that are not resolved through the objection process will be addressed by the Water Court.
- Who can answer further questions?
 - The DNRC and Water Court are available to help you.
 - The Water Court staff can help with procedural questions. Water Court staff may not provide legal advice or discuss substantive aspects of a claim. The Water Court can be contacted as follows:
 - watercourt@mt.gov via e-mail, or toll free at 800-624-3270
 - The DNRC is available for technical assistance and can be contacted as follows:
 - 406-444-0560